

**Federal Communications Commission**  
**Biennial Regulatory Review 2002**  
**Consumer & Governmental Affairs Bureau**  
**Docket No. CG 02-311**  
**Docket No. GC 02-390**

**Staff Report**  
**December 31, 2002**

## I. OVERVIEW

1. This Staff Report summarizes the findings of an extensive review by the Consumer & Governmental Affairs Bureau (CGB or the Bureau) of the Federal Communications Commission's rules under CGB's purview. Accompanying this report is a rule part analysis that identifies and explains the purpose of each applicable rule or rule part, discusses the impact of economic competition on the rule, summarizes and addresses comments filed, and where appropriate as the result of meaningful economic competition between telecommunications service providers, recommends modification or repeal of the rule or rule part.

2. This report and analyses are part of the Commission's biennial regulatory review process, as required by section 11 of the Communications Act of 1934, as amended.<sup>1</sup> This report continues and builds upon the findings and recommendations made in the 2000 Biennial Regulatory Review.<sup>2</sup> The information herein represents staff findings and recommendations, and thus does not reflect formal Commission opinions or binding determinations.

## II. SCOPE OF REVIEW

3. The Consumer & Governmental Affairs Bureau was recently formed as part of the overall reorganization of the Commission that was approved by Congress on March 28, 2002. The Bureau advises the Commission on consumer policy concerning the Commission's regulated entities, including common carrier, broadcast, wireless, satellite and cable companies. Through rulemakings and orders for which it has primary responsibility, and by commenting on rulemakings and orders originated by other Bureaus and Offices, the Bureau ensures that consumer interests are considered in all Commission policy-making activities.

4. In addition, the Bureau advises the Commission, through the Disabilities Rights Office, on issues relevant to persons with disabilities. The Bureau engages in rulemakings, and reviews rulemakings and orders originating in other Bureaus and Offices to develop recommendations and propose policies to ensure that telecommunications services and technologies are accessible to persons with disabilities, in conformance with existing disability laws and policies, and consistent with the Commission's goal of increasing accessibility of telecommunications services and technologies for persons with disabilities.

5. The Bureau also provides informal mediation and resolution of individual informal consumer inquiries and complaints consistent with controlling laws and Commission regulations, and in accordance with the Bureau's delegated authority. Additional functions of the Bureau include the development and implementation of consumer outreach and education initiatives and the performance of intergovernmental affairs on behalf of the Commission.

6. As part of the review process, the Consumer & Governmental Affairs Bureau has reviewed all of the rules within each of the following parts that apply to "the operations or

---

<sup>1</sup> 47 U.S.C. § 161.

<sup>2</sup> See *2000 Biennial Regulatory Review*, Report, 16 FCC Rcd 1207 (2001)(2000 Report). Staff Report available at <http://www.fcc.gov/Reports/biennial2000report.doc>.

activities of any provider of telecommunications service.”<sup>3</sup>

Part 1 – Practice and Procedure – Subpart E – Informal Complaints – Establishes procedures for the submission and treatment of informal complaints.

Part 6 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities – Outlines the obligations of manufacturers and service providers concerning accessibility to telecommunications service and equipment.

Part 7 – Access to Voicemail and Interactive Menu Services and Equipment by People with Disabilities – Outlines the obligations of providers of voicemail and interactive menu services as well as manufacturers of telecommunications equipment that performs a voicemail or interactive menu function.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Addresses a broad range of common carrier issues. Specifically: Subpart B (Indecent Telephone Message Services); Subpart F (Telecommunications Relay Service and Related Consumer Premises Equipment for Persons with Disabilities); Subpart G (Furnishing of Enhanced Services and Customer Premises Equipment by Bell Operating Companies; Telephone Operator Services (sections 64.703-705, 64.707-710)); Subpart K (Changing Long Distance Service); Subpart L (Restrictions on Telephone Solicitation); Subpart O (Interstate Pay-Per-Call and Other Information Services); Subpart P (Calling Party Telephone Number; Privacy); Subpart Y (Truth-in-Billing Requirements for Common Carriers).

Part 68 – Connection of Terminal Equipment to the Telephone Network – Establishes conditions for direct connection to the network of registered terminal equipment to prevent network harm and ensure that telephones are compatible with hearing aids and meet volume control guidelines. CGB’s review is limited to the rules in this part relating to hearing aid compatibility and volume control and consumer protection rules and to section 68.318(c) (Line seizure by automatic telephone dialing systems) and section 68.318(d) (Telephone facsimile machines; Identification of the sender of the message). Other subparts of Part 68 are being reviewed by the Wireline Competition Bureau.

### III. RECENT ACTIVITIES

7. Recently, the Commission has taken several actions designed to address the implementation and administration of the consumer protection mandates of the Communications Act, as amended by the Telecommunications Act of 1996.<sup>4</sup> Most recently, the Commission initiated a rulemaking proceeding to review whether any of its telemarketing rules implementing

<sup>3</sup> See *The Commission Seeks Comment in the 2002 Biennial Review of the Telecommunications Regulations Within the Purview of the Consumer & Governmental Affairs Bureau*, Public Notice, CG Docket No. 02-311 (rel. Sep. 26, 2002).

<sup>4</sup> Pub. L. No. 104-104, 110 Stat. 61.

the Telephone Consumer Protection Act of 1991<sup>5</sup> need to be revised or additional rules need to be adopted to more effectively carry out Congress's directives.<sup>6</sup> The Commission also initiated a rulemaking seeking comments on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints as part of the 2000 Biennial Regulatory Review.<sup>7</sup>

8. Other recent actions include the release of a *Second Order on Reconsideration*<sup>8</sup> on December 12, 2001, which adopted rule clarifications and revisions to the rules implementing the Telephone Operator Consumer Services Improvement Act of 1990<sup>9</sup> to, among other things, ensure that consumers receive sufficient information about the rates they will pay for operator services at public phones and other aggregator locations. In a pending rulemaking, the Commission is also considering whether to forbear from applying requirements relating to the provision of telephone operator services in the context of CMRS services.<sup>10</sup>

9. On May 15, 2001, the Commission released a *First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129* amending the slamming rules to provide for a streamlined process for compliance with section 258 of the Communications Act, as amended by the Telecommunications Act of 1996,<sup>11</sup> in situations involving the carrier-to-carrier sale or transfer of subscriber bases. This action reduced the administrative burdens on carriers by eliminating the need to obtain waivers while continuing to protect consumers. Additionally, the Commission continues to address slamming complaints. During the two-year period covered by this Biennial Review, 2001-2002, the Commission has released through CGB more than five hundred orders regarding slamming complaints.

10. The Commission has also taken several actions in its continuing efforts to ensure that telecommunications services are accessible to persons with disabilities. These include

---

<sup>5</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

<sup>6</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

<sup>7</sup> *Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission; Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers; 2000 Biennial Review*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CI Docket No. 02-32, CC Docket Nos. 94-93, 00-175, 17 FCC Rcd 3919 (2002).

<sup>8</sup> *In the Matter of Billed Party Preference For Interlata 0+ Calls*, Second Order on Reconsideration, CC Docket No. 92-77, 16 FCC Rcd 22314 (rel. Dec. 12, 2001).

<sup>9</sup> Pub. L. No. 101-435, 104 Stat. 986 (1990) *codified at* 47 U.S.C. § 226.

<sup>10</sup> *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857 (1998).

<sup>11</sup> *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 00-257, CC Docket No. 94-129, First Report and Order and Fourth Report and Order, 16 FCC Rcd 11218 (2001).

actions addressing the provision of Telecommunications Relay Service (TRS). In December 2001, the Commission, among other things, directed the TRS Fund administrator to ensure that providers are able to recover their reasonable costs related to providing Video Relay Service (VRS) by establishing an interim VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS, and sought further comment on what VRS cost recovery mechanism should be established on a permanent basis.<sup>12</sup>

11. In April 2002, the Commission released a *Declaratory Ruling and Second Notice of Proposed Rulemaking* in which it concluded that TRS providers are entitled to recover the costs of Internet Protocol (IP) relay from the Interstate TRS Fund.<sup>13</sup> The Commission also sought further comment on whether the recovery of costs from the interstate TRS Fund for IP Relay should be a temporary or a permanent measure, and whether the Commission should devise a methodology for allocating IP Relay calls as intrastate or interstate.

12. On October 25, 2002, the Commission released a *Fifth Report and Order* eliminating the requirement that common carriers provide coin sent-paid toll TRS calls from payphones on the grounds that it is currently technologically infeasible to provide coin sent-paid relay service through payphones.<sup>14</sup> The *Order* requires common carriers to provide free local payphone calls made through TRS facilities to TRS users. The *Order* also strongly encourages carriers to engage in specific outreach and education programs to inform TRS users of their options when placing calls from payphones and requires a report on outreach and educational efforts.

13. In addition to these efforts, the Commission initiated a rulemaking on October 29,

---

<sup>12</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, 16 FCC Rcd 22948 (2001).

<sup>13</sup> *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, CC Docket No. 98-67, 17 FCC Rcd 7779 (2002).

<sup>14</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Fifth Report and Order, FCC 02-269 (rel. Oct. 25, 2002).

2001, with regard to Part 68 of the Commission's rules implementing the Hearing Aid Compatibility Act of 1988 (HAC Act),<sup>15</sup> to examine whether public mobile service telephones, which are currently exempt from the Commission's rules implementing the HAC Act, should be required to be hearing aid compatible.<sup>16</sup>

14. In conjunction with other Bureaus and Offices, CGB also continues to develop consumer alerts, consumer fact sheets, education campaigns and media outreach campaigns to give consumers information about telecommunications products and services, their rights, and information so that they can make informed choices and protect themselves against unscrupulous practices.

---

<sup>15</sup> 47 U.S.C. § 610.

<sup>16</sup> *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Notice of Proposed Rulemaking, WT Docket No. 01-309, 16 FCC Rcd 20588 (rel. Nov. 14, 2001).

---

**APPENDIX: RULE PART ANALYSIS****Part 1, Subpart E – Complaints, Applications, Tariffs, and Reports Involving Common Carriers, Informal Complaints, Sections 1.716-1.719.****Description**

1. Part 1, Subpart E implements section 208 of the Communications Act of 1934, as amended.<sup>1</sup> Section 208 permits any person to lodge a complaint with the Commission against a common carrier alleging a violation of the Communications Act. Subpart E establishes the rules for the submission and treatment of two categories of complaints against common carriers. These are “Formal Complaints,” which are governed by sections 1.720 – 1.736, and “Informal Complaints,” which are governed by sections 1.716-1.719.<sup>2</sup> The Informal Complaint rules emphasize ease of filing by consumers, and voluntary cooperative efforts by consumers and affected companies to resolve their differences informally. The Consumer & Governmental Affairs Bureau’s analysis of Part 1, Subpart E will be limited to “Informal Complaints” governed by sections 1.716 - 1.719.

**Purpose**

2. Part 1, Subpart E, Informal Complaints, sections 1.716 -1.719, sets forth procedures for the receipt and review of informal complaints against common carriers. Such complaints include complaints against a common carrier submitted outside the formal section 208 common carrier complaint process. These rules are designed to facilitate the efficient and expeditious processing of complaints submitted pursuant to section 208 by consumers in order to promote maximum compliance with the requirements of the Communications Act, as amended, and the Commission’s rules and implementing orders.

**Analysis****Status of Competition**

3. Section 208 authorizes complaints against all common carriers involving any of their obligations. These essentially procedural rules facilitate consumer complaints against common carriers and have not been impacted by competition.

---

<sup>1</sup> 47 U.S.C. § 208.

<sup>2</sup> Section 1.719 of the Commission’s rules governs the treatment of informal complaints filed pursuant to section 258 of the Telecommunications Act of 1996 (47 U.S.C. § 258). Section 258 prohibits “slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telecommunications service.

## Recent Efforts

4. In its report to the Commission for the 2000 Biennial Review, the staff recommended that the Commission consider reviewing its informal complaint rules because these rules do not specify the documentation consumers must file with the Commission to complete their complaints, and they do not prescribe a specific timeframe for carriers to respond to an informal complaint.<sup>3</sup> Staff also recommended that these rules be reviewed to determine whether their scope should be expanded to complaints against all entities regulated by the Commission. In its Report for the 2000 Biennial Review, the Commission accepted staff's recommendations.<sup>4</sup> On February 14, 2002, the Commission issued a *Notice of Proposed Rulemaking* seeking comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, and with the Commission's implementing rules and orders.<sup>5</sup> On September 18, 2002, the Commission released a *Notice of Proposed Rulemaking* seeking comment on whether any of its telemarketing rules need to be revised or additional rules need to be adopted to more effectively carry out Congress's directives in the Telephone Consumer Protection Act (TCPA).<sup>6</sup> As part of that inquiry, the Commission seeks comment on whether to extend the informal complaints process to non-common carriers for telemarketing.

---

<sup>3</sup> *Federal Communications Commission Biennial Regulatory Review 2000*, CC Docket No. 00-175, Updated Staff Report (rel. January 17, 2001), Appendix IV at 6-7.

<sup>4</sup> *In the Matter of the 2000 Biennial Regulatory Review*, CC Docket No. 00-175, Report, 16 FCC Rcd 1207, 1234 (rel. Jan. 17, 2001).

<sup>5</sup> *Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission; Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers; 2000 Biennial Review*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CI Docket No. 02-32, CC Docket Nos. 94-93, 00-175, 17 FCC Rcd 3919 (2002). This inquiry does not address section 1.719 of the Commission's rules, which addresses informal complaints filed pursuant to section 258 of the Telecommunications Act of 1996. Section 258 prohibits "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service.

<sup>6</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

## Comments

5. All the comments received addressing the informal complaint process supported the continued application of the rules and generally emphasized the importance of the informal complaint process for consumers.<sup>7</sup>

## Recommendation

6. The staff does not recommend any changes to the informal complaint rules as part of the Biennial Review. The informal complaint rules facilitate the efficient and expeditious processing of complaints submitted pursuant to section 208 by consumers in order to promote maximum compliance with the requirements of the Communications Act, as amended, and the Commission's rules and implementing orders. As noted above, the comments received addressing the rules governing informal complaints support continued application of the rules and highlight the importance of the rules to consumers. Moreover, because these informal complaint procedural rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. Accordingly, the staff concludes that the rules remain necessary in the public interest and recommends that repeal or modification is not warranted. The staff notes, however, that the Commission is currently considering whether to revise and expand the rules as a result of the 2000 Biennial Review.<sup>8</sup>

---

<sup>7</sup> See, e.g., Comments of Pamela Y. Holmes, Chair, National Association of the Deaf – Telecommunications Advocacy Network; Comments of Andrew J. Lange; Comments of Lawrence J. Brick; Comments of Susan Tilson Watson.

<sup>8</sup> *Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission; Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers; 2000 Biennial Review*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CI Docket No. 02-32, CC Docket Nos. 94-93, 00-175, 17 FCC Rcd 3919 (2002).

## **Part 6 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities**

### **Description**

7. Part 6 implements sections 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>9</sup> Sections 255 and 251(a)(2) require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. The rules also establish complaint procedures to provide aggrieved parties an unqualified option to pursue an accessibility claim against a manufacturer or service provider informally or through more formal adjudicatory procedures.

### **Purpose**

8. The purpose of the rules is to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services.

### **Analysis**

#### **Status of Competition**

9. Not relevant. As noted above, Part 6 implements sections 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>10</sup> These provisions are intended to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services by requiring manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Accordingly, the realization of these benefits is not determined by economic competition.

---

<sup>9</sup> 47 U.S.C. §§ 255, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

<sup>10</sup> 47 U.S.C. §§ 255, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

### Recent Efforts

10. No recent actions.

### Comments

11. All the comments received emphatically assert that the rules have benefited persons with disabilities and therefore should remain in place.<sup>11</sup> These commenters strongly oppose any repeal or revisions that weaken the rules. Microsoft states that Part 6 of the rules play a critical role in ensuring that persons with disabilities share in the benefits of telecommunications services and therefore the rules should be retained in their current form.<sup>12</sup> Although concluding that the current rules are beneficial to persons with disabilities, some commenters contend that the rules should be strengthened or more vigorously enforced.<sup>13</sup> The American Federation for the Blind acknowledges that the Part 6 rules are critical to meeting access obligations for consumers with disabilities and asks the Commission to reconsider the categorization of various communications services and to conclude that many of the services classified as “enhanced” or “information” services are functionally “telecommunications services,” and that equipment that enables those functions is within the definition of “customer premises equipment.”<sup>14</sup>

### Recommendation

12. The staff does not recommend changes to Part 6 as part of the Biennial Review. All the comments received addressing Part 6 support the continued application of the rules. The rules serve to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services to ensure their full participation in our society. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 6 remains necessary in the public interest and recommend that repeal or modification is not warranted. We also note that recommendations to adopt additional rules in this area are beyond the scope of the Biennial Review. Parties who wish to make specific rule changes based on factors other than those in the Biennial Review should file an application for rulemaking with the Commission.

---

<sup>11</sup> See, e.g., Comments of Telecommunications for the Deaf, Inc.; Comments of James D. Gibbons, President CEO, National Industries for the Blind; Comments of David Meyers, Texas Commission for the Deaf and Hard of Hearing; Comments of I. King Jordan, President, Gallaudet University.

<sup>12</sup> Comments of Microsoft Corporation at 1-2, 3.

<sup>13</sup> See, e.g., Comments of The Texas Commission for the Deaf and Hard of Hearing.

<sup>14</sup> Comments of The American Federation for the Blind at 2.

## **Part 7 – Access to Voicemail and Interactive Menu Services and Equipment by People with Disabilities**

### **Description**

13. Part 7 implements sections 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>15</sup> Sections 255 requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Part 7 extends these accessibility requirements to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that perform those functions. The rules also establish complaint procedures to provide aggrieved parties an unqualified option to pursue an accessibility claim against a manufacturer or service provider informally or through more formal adjudicatory procedures.

### **Purpose**

14. The purpose of the rules is to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services. This will ensure their full participation in our society by extending these accessibility requirements of section 255 to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that performs these functions.

### **Analysis**

#### **Status of competition**

15. Not relevant. As noted above, Part 7 implements section 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>16</sup> This provision is intended to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services by requiring manufacturers of telecommunications equipment

---

<sup>15</sup> 47 U.S.C. § 255. *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

<sup>16</sup> 47 U.S.C. §§ 225, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Part 7 extends these accessibility requirements to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that perform those functions. Accordingly, the realization of these benefits is not determined by economic competition.

### **Recent Efforts**

16. No recent actions.

### **Comments**

17. The comments received emphatically assert that the rules have benefited persons with disabilities and therefore should remain in place.<sup>17</sup> These commenters strongly oppose any repeal or revisions that weaken the rules. Microsoft states that Part 7 of the rules plays a critical role in ensuring that persons with disabilities share in the benefits of telecommunications services and therefore should be retained in their current form.<sup>18</sup> Although concluding that the current rules are beneficial to persons with disabilities, some commenters further contend that the rules should be strengthened or more vigorously enforced.<sup>19</sup>

### **Recommendation**

18. The staff does not recommend changes to Part 7 as part of the Biennial Review. All the comments received addressing Part 7 support the continued application of the rules. The rules serve to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services, ensuring their full participation in our society. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 7 remains necessary in the public interest and recommend that repeal or modification is not warranted. We also note that recommendations to adopt additional rules in this area are beyond the scope of the Biennial Review. Parties who wish to make specific rule changes based on factors other than those in the Biennial Review should file an application for rulemaking with the Commission.

---

<sup>17</sup> See, e.g., Comments of Telecommunications for the Deaf, Inc.; Comments of James D. Gibbons, President CEO, National Industries for the Blind; Comments of David Meyers, Texas Commission for the Deaf and Hard of Hearing; Comments of I. King Jordan, President, Gallaudet University. See also Comments of Self Help for Hard of Hearing People (SHHH) re: Notice of 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Consumer & Governmental Affairs Bureau.

<sup>18</sup> Comments of Microsoft Corporation at 1-2, 3.

<sup>19</sup> See, e.g., Comments of The Texas Commission for the Deaf and Hard of Hearing.

---

**PART 64, Subpart B – Restrictions on Indecent Telephone Message Services****Description**

19. Part 64, Subpart B implements the provisions of section 223(b) of the Communications Act of 1934, as amended, relating to defenses to prosecution for indecent commercial communications.<sup>20</sup> Section 223(b) prohibits the use of the telephone for the purpose of obscene commercial communications. It also prohibits use of the telephone for indecent commercial communications without the consent of the other party and prohibits use of the telephone for indecent commercial communications that are available to anyone under 18 years of age. Section 223(b) also provides for certain defenses to prosecution for making indecent commercial communications.

20. Under section 64.201 of the Commission's rules, a provider of indecent commercial telephone communications has a defense to prosecution if the provider has notified the common carrier that the provider is engaged in providing indecent commercial communications, and does one of the following: (1) requires credit card payment before transmitting the message; (2) requires an authorized access or identification code, which has been established by mail, before transmitting the message; or (3) scrambles the message so that the audio is unintelligible and incomprehensible without a descrambler. Subpart B also provides a defense to prosecution for message sponsor subscribers to mass announcement services if they ask the carrier to take certain precautions. In addition, Subpart B bars common carriers, to the extent technically feasible, from providing access to obscene or indecent communications from the telephone to anyone who has not previously requested access to such services in writing if the carrier provides billing and collection for the provider of the obscene or indecent communications.

**Purpose**

21. Part 64, Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications consistent with the First Amendment. In particular, Subpart B is intended to protect minors and non-consenting adults from indecent communications.

**Analysis****Status of Competition**

22. Not relevant. As noted, Part 64, Subpart B is intended to protect minors and non-consenting adults from indecent communications by implementing restrictions on

---

<sup>20</sup> 47 U.S.C. § 223(b).

the commercial provision by telephone of indecent communications. Such protections are not determined by economic competition.

### **Recent Efforts**

23. There have not been any significant actions.

### **Comments**

24. No comments were received that specifically address Part 64, Subpart B.

### **Recommendation**

25. The staff does not recommend changes to Part 64, Subpart B as part of the Biennial Review. Part 64, Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications consistent with the First Amendment. In particular, Subpart B is intended to protect minors and non-consenting adults from indecent communications. Moreover, because Part 64, Subpart B is not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 64, Subpart B remains necessary in the public interest and recommend that repeal or modification is not warranted.

## **Part 64, Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities**

### **Description**

26. Part 64, Subpart F implements section 225 of the Communications Act of 1934, as amended.<sup>21</sup> Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure that telecommunications relay services (TRS) are available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States.<sup>22</sup> Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to that available to persons who do not have such a disability. The rules provide minimal functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS. The Consumer & Governmental Affairs Bureau’s analysis of part 64, Subpart F will be limited to an analysis of issues relating to TRS policy. For a discussion of issues related to administration of the TRS Fund refer to the Wireline Competition Bureau’s analysis of Part 64, Subpart F.

### **Purpose**

27. Part 64, Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for TRS programs. The TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make TRS calls, regardless of where their calls originate or terminate.

### **Analysis**

#### **Status of Competition**

28. At present, there is competition in the interstate TRS market. The majority of intrastate TRS, however, is provided by state TRS programs certified as meeting the Commission's mandatory minimum standards. Therefore, the individual states decide

---

<sup>21</sup> 47 U.S.C. § 225.

<sup>22</sup> Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990).

whether to have multiple TRS providers at the intrastate level as part of their state program, or whether to limit competition for intrastate TRS to the request for proposal and vendor selection process.

### Recent Efforts

29. Pursuant to Commission orders, the TRS Fund has recently begun to reimburse TRS providers for the costs of providing both intrastate and interstate video relay services (VRS). In December 2001, the Commission, among other things, directed the TRS Fund administrator to ensure that providers are able to recover their reasonable costs related to providing VRS by establishing an interim VRS cost recovery rate using the average per minute compensation methodology used for traditional TRS. The Commission also sought further comment in a *Further Notice of Proposed Rulemaking* on what VRS cost recovery mechanism should be established on a permanent basis.<sup>23</sup>

30. In April 2002, the Commission released a *Declaratory Ruling* in which it concluded that TRS providers are entitled to recover the costs of Internet Protocol (IP) relay from the Interstate TRS Fund.<sup>24</sup> The Commission also sought comment in a *Second Further Notice of Proposed Rulemaking* on whether the recovery of costs from the interstate TRS Fund for IP Relay should be a temporary or a permanent measure, and whether the Commission should devise a methodology for allocating IP Relay calls as intrastate or interstate.

31. On October 25, 2002, the Commission released a *Fifth Report and Order* eliminating the requirement that common carriers provide coin sent-paid telecommunications relay service (TRS) toll calls from payphones on the grounds that it is currently technological infeasible to provide coin sent-paid long distance TRS calls through payphones.<sup>25</sup> The Order requires common carriers to provide free local payphone calls made through TRS facilities by TRS users. The Order also encourages carriers to engage in specific outreach and education programs to inform

---

<sup>23</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, 16 FCC Rcd 22948 (2001).

<sup>24</sup> *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc.*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Docket No. 98-67, 17 FCC Rcd 7779 (2002).

<sup>25</sup> *Telecommunications Services for Individuals with hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Fifth Report and Order, FCC 02-269, (rel. Oct 25, 2002).

TRS users of their options when placing calls from payphones and requires a report of outreach and educational efforts.

### Comments

32. The comments received emphatically assert that the rules have benefited persons with disabilities and therefore should remain in place.<sup>26</sup> These commenters strongly oppose any repeal or revisions that weaken the rules. Although concluding that the current rules are beneficial to persons with disabilities, some commenters further maintain that the rules should be strengthened. Others assert that the rules should be more aggressively enforced. Relay Nevada recommends that the National Exchange Carrier's Association fund a national 711/TRS outreach.<sup>27</sup> Relay Nevada also recommends that the Commission should mandate that wireless companies share in the per-line surcharges that fund TRS.<sup>28</sup> Finally, Relay Nevada also recommends that the regulations mandating 60 words-per-minute for typing for TRS operators should be clarified to include accuracy and define how accuracy is measured.<sup>29</sup>

### Recommendation

33. The staff does not recommend changes to Part 64, Subpart F as part of the Biennial Review. The comments received emphatically support the continued provision of TRS under the rules. The TRS rules serve to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for relay programs. The TRS rules also ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their calls originate or terminate. We accordingly conclude that the TRS rules remain necessary in the public interest and recommend that repeal or modification is not warranted. We also note that recommendations to adopt additional rules in this area are beyond the scope of the Biennial Review. Such matters may be addressed by the Commission in future actions.<sup>30</sup>

---

<sup>26</sup> See, e.g., Comments of Pamela Y. Holmes, Chair, National Association of the Deaf – Telecommunications Advocacy Network; Comments of the Rehabilitation Engineering Center on Telecommunications Access of the Trace Center, University of Wisconsin and Gallaudet University; Comments of I. King Jordan, President, Gallaudet University.

<sup>27</sup> Relay Nevada Comments at 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> The Commission is currently considering the record created by a *Further Notice of Proposed Rulemaking* in which it sought comment on various TRS-related issues, such as technological advances that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users, cost recovery matters, the establishment and funding of a national outreach campaign to increase TRS awareness among all callers, not just those with disabilities, and whether TRS facilities should have access to SS7 technology to provide specialty services such as caller ID. See *In the Matter of* (continued....)

## Part 64, Subpart G – Furnishing of Enhanced Services and Customer Premises Equipment by Bell Operating Companies; Telephone Operator Services

### Description

34. Part 64, Subpart G addresses: (1) the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies (BOCs); and (2) the provision of operator services. To the extent that Part 64, Subpart G addresses the provision of operator services, the rules implement the provisions and standards of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) as codified at section 226 of the Communications Act of 1934, as amended.<sup>31</sup> The purpose of TOCSIA is to protect consumers who make interstate operator assisted calls from payphones, hotels, and other public locations from unreasonably high rates and unfair and deceptive practices. There are two categories of requirements set forth in TOCSIA and the Commission's rules: 1) rules applicable to "Aggregators" which are defined as persons or entities that make telephones available to the public or to transient users of their facilities for interstate telephone calls using a provider of operator services and 2) rules applicable to "Operator Service Providers" which are defined as common carriers that provide operator services, or any other persons determined by the Commission to be providing operator services. The rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates upon request. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice. The rules impose restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of informational tariffs and the provision of operator services for prison inmates. The Consumer & Governmental Affairs Bureau's analysis of Part 64, Subpart G is limited to that portion of Subpart G that implements TOCSIA.<sup>32</sup>

### Purpose

35. The purpose of Part 64, Subpart G is, in part, to protect consumers by ensuring that they have information about the rates charged by operator services providers, and that they can reach the operator services provider of their choice. The rules also

---

(...continued from previous page)

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC No. 00-56, 15 FCC Rcd 5140 (2000).

<sup>31</sup> 47 U.S.C. § 226.

<sup>32</sup> We note that while the Consumer & Governmental Affairs Bureau has primary responsibility for most of the TOCSIA rules, the Wireline Competition Bureau has primary responsibility for the remaining TOCSIA rules.

promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls.

## Analysis

### Status of Competition

36. The operator services market continues to become increasingly competitive.

### Recent Efforts

37. On December 12, 2001, the Commission released a *Second Order on Reconsideration*<sup>33</sup> in which it resolved certain outstanding petitions for reconsideration regarding the rules to ensure that consumers receive sufficient information about the rates they will pay for operator services at public phones and other aggregator locations. The Commission also adopted rule clarifications and changes designed to allow consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

### Comments

38. No comments were received addressing Part 64, Subpart G with respect to the provisions implementing TOCSIA.

## Recommendation

39. The staff does not recommend changes to Part 64, Subpart G, to the extent it implements the provisions and standards of TOCSIA, as part of the Biennial Review. The purpose of Part 64, Subpart G is, in part, to protect consumers by ensuring that they have information about the rates charged by operator services providers, and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls. We accordingly conclude that Part 64, Subpart G remains necessary in the public interest to the extent it implements the provisions and standards of TOCSIA and recommend that repeal or modification is not warranted. We note also that the Commission is currently considering whether to forbear from applying requirements relating to the provision of telephone operator services in the context of CMRS.<sup>34</sup>

<sup>33</sup> *In the Matter of Billed Party Preference For Interlata 0+ Calls*, Second Order on Reconsideration, CC Docket No. 92-77, 16 FCC Rcd 22314 (rel. Dec. 12, 2001).

<sup>34</sup> *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857 (1998).

## Part 64, Subpart K – Changing Long Distance Service

### Description

40. Part 64, Subpart K implements section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>35</sup> Section 258 expanded the Commission's existing authority to deter and punish "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. The rules prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change telecommunications carriers. A carrier that fails to comply with the Commission's verification procedures is liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. The rules absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

### Purpose

41. Part 64, Subpart K attempts to: eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized telecommunications carrier without the subscriber's knowledge or explicit authorization; foster consumer choice; and facilitate competition in the telecommunications services market.

### Analysis

#### Status of Competition

42. Competition in local service markets has continued to increase since the 2000 Biennial Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service over cable has increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993. There is greater competition for high volume customers than for low volume customers.

---

<sup>35</sup> 47 U.S.C. § 258.

### Recent Efforts

43. On May 15, 2001, as part of the 2000 Biennial Review effort, the Commission released a *First Report and Order in Docket No. 00-257 and Fourth Report and Order in Docket No. 94-129* amending the Part 64, Subpart K rules to provide a streamlined process for compliance with section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and the Commission's rules, in situations involving the carrier-to-carrier sale or transfer of subscriber bases.<sup>36</sup> Under the streamlined procedures, an acquiring carrier simply must self-certify to the Commission, in advance of the transfer, that the carrier will follow the required procedures and must provide 30 days advance notice to the affected subscribers. The streamlined procedures became effective on June 21, 2001.

### Comments

44. No comments were received that specifically address Part 64, Subpart K.

### Recommendation

45. The staff does not recommend changes to Part 64, Subpart K as part of the Biennial Review. Part 64, Subpart K attempts to: eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized telecommunications carrier without the subscriber's knowledge or explicit authorization; foster consumer choice; and facilitate competition in the telecommunications services market. Moreover, meaningful economic competition still does not diminish the need for the anti-slamming rules. To the contrary, increased carrier competition for customers may exacerbate the slamming practice and thus increase the necessity for such anti-slamming, consumer protection regulation. We accordingly conclude that Part 64, Subpart K remains necessary in the public interest and recommend that repeal or modification is not warranted.

---

<sup>36</sup> *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 00-257, CC Docket No. 94-129, First Report and Order and Fourth Report and Order, 16 FCC Rcd 11218 (2001).

## Part 64, Subpart L – Restrictions On Telephone Solicitation

### Description

46. Part 64, Subpart L implements Section 227 of the Communications Act of 1934 as amended.<sup>37</sup> Section 227 codifies the Telephone Consumer Protection Act of 1991 (TCPA) which was enacted to address certain telemarketing practices thought to be an invasion of consumer privacy and risk to public safety. The TCPA imposes restrictions on the use of automatic telephone dialing systems (“autodialers”), artificial or prerecorded messages, and telephone facsimile machines, and requires the Commission to adopt rules to implement these protections. Pursuant to the Commission's rules implementing the TCPA, a person or entity engaged in telemarketing is required to maintain a record of a called party's request not to receive future solicitations for a period of ten years. Telemarketers must develop and maintain written policies for maintaining their lists, and they are required to inform their employees of the list's existence and train them to use the list. The rules prohibit telemarketers from calling residential telephone subscribers before 8 a.m. or after 9 p.m. and require telemarketers to identify themselves to called parties. As mandated by the TCPA, the Commission's rules establish general prohibitions against autodialed calls being made without prior express consent to certain locations, including emergency lines or health care facilities, the use of prerecorded or artificial voice message calls to residences, and the transmission of unsolicited advertisements by facsimile machines. The TCPA rules provide that facsimile and prerecorded voice transmissions, as well as telephone facsimile machines, must meet specific identification requirements. The TCPA rules also prohibit line seizures by prerecorded messages. Both the identification requirements and prohibition on line seizures are codified in Part 68 of the Commission's rules (see 47 C.F.R. §§ 68.318(c) and 68.318(d)).<sup>38</sup>

### Purpose

47. Part 64, Subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

### Analysis

#### Status of Competition

48. Not relevant. As noted above, Part 64, Subpart L implements the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA is intended to protect subscriber privacy without unnecessarily restricting legitimate telephone marketing

---

<sup>37</sup> 47 U.S.C. § 227.

<sup>38</sup> See discussion of Part 68 herein for an analysis of these rules.

and sales. The realization of such protections is not determined by economic competition. The staff notes that since the adoption of the rules, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines.

### Recent Efforts

49. On September 18, 2002, the Commission released a *Notice of Proposed Rulemaking* seeking comment on whether any of its telemarketing rules need to be revised or additional rules need to be adopted to more effectively carry out Congress's directives in the Telephone Consumer Protection Act (TCPA).<sup>39</sup>

### Comments

50. No comments were received that specifically address Part 64, Subpart L.

### Recommendation

51. The staff does not recommend changes to Part 64, Subpart L as part of the Biennial Review. Part 64, Subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted. The staff also notes that the Commission is currently considering whether to revise or expand the rules to more effectively carry out the mandate of the TCPA.<sup>40</sup>

---

<sup>39</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

<sup>40</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

## Part 64, Subpart O – Interstate Pay-Per-Call and Other Information Services

### Description

52. Part 64, Subpart O implements section 228 of the Communications Act of 1934, as amended.<sup>41</sup> Subpart O concerns pay-per-call and certain other information services. Subpart O requires common carriers that assign telephone numbers to providers of interstate pay-per-call services to require that the provider comply with these rules as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and “toll free” numbers and bars the provision of interstate pay-per-call services on a collect basis. Subpart O provides for 900 service access code assignment to pay-per-call services. It requires local exchange carriers to offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services and bars the disconnection or interruption of local exchange or long-distance service for the non-payment of charges for interstate pay-per-call and certain information services.

### Purpose

53. Part 64, Subpart O is intended to both promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

### Analysis

#### Status of Competition

54. Competition in local service markets has continued to increase since the 2000 Biennial Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service over cable has increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993. There is greater competition for high volume customers than for low volume customers.

---

<sup>41</sup> 47 U.S.C. § 228. Section 228 codifies the Telephone Disclosure and Dispute Resolution Act, Public Law 102-556, 106 Stat. 4181, approved Oct. 28, 1992.

**Recent Efforts**

55. No recent efforts.

**Comments**

56. No comments were received specifically addressing Part 64, Subpart O of the Commission's rules.

**Recommendation**

57. The staff does not recommend changes to Subpart O as part of the current Biennial Review. Part 64, Subpart O is intended to both promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services. The staff believes these regulatory objectives continue to be valid. We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted. Staff notes that there is an open proceeding addressing the Subpart O rules that has been outstanding for several years.<sup>42</sup> The staff recommends that the Commission refresh and update the record in that proceeding to address the changes in the pay-per-call marketplace.

---

<sup>42</sup> *In the Matter of Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996, In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 96-146 and CC Docket No. 93-22, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 14738 (1996).

**Part 64, Subpart P – Calling Party Telephone Number; Privacy****Description**

58. The requirements in Part 64, Subpart P are based on the Commission's authority under sections 1, 4, 201-205, and 218 of the Communications Act of 1934, as amended.<sup>43</sup> Subpart P covers Calling Party Number (CPN) services, including "Caller ID," which depend on capabilities that use out-of-band signaling techniques such as "Signaling System Seven (SS7)." Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize \*67 as a caller's request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize \*82 as a caller's request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P requires carriers to notify customers of their \*67 and \* 82 capabilities and restricts the use of telephone subscriber information.

**Purpose**

59. The purpose of Part 64, Subpart P is to protect subscriber privacy while fostering the development of new and innovative services.

**Analysis****Status of Competition**

60. Competition in local service markets has continued to increase since the 2000 Biennial Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service over cable has increased to over two million connections. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen by 37 percent since 1993. There is greater competition for high volume customers than for low volume customers.

---

<sup>43</sup> 47 U.S.C. §§ 151, 154, 201-205, 218.

### Recent Efforts

61. On September 18, 2002, the Commission released a *Notice of Proposed Rulemaking*<sup>44</sup> seeking comment on whether any of its telemarketing rules need to be revised or additional rules need to be adopted to more effectively carry out Congress's directives in the Telephone Consumer Protection Act (TCPA). As part of this inquiry, the Commission seeks comment on whether Part 64, Subpart P should be amended in any way if the Commission were to adopt rules regarding the transmission of caller ID information by telemarketers to ensure that the two sets of rules are consistent.

### Comments

62. No comments were received specifically addressing Part 64, Subpart P.

### Recommendation

63. The staff does not recommend any changes as part of the Biennial Review. The purpose of Part 64, Subpart P is to protect subscriber privacy while fostering the development of new and innovative services. The staff believes these regulatory objectives continue to be valid. We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted. The staff, however, notes that the Commission is currently considering whether to revise these rules to the extent necessary should the Commission adopt any rules regarding the transmission of caller ID information by telemarketers as part of its open inquiry into the revision of the rules implementing the Telephone Consumer Protection Act.<sup>45</sup>

---

<sup>44</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

<sup>45</sup> *Id.*

## Part 64, Subpart Y – Truth-In-Billing Requirement for Common Carriers

### Description

64. The Commission adopted the rules in Subpart Y pursuant to its authority under sections 201(b) and 258 of the Communications Act of 1934, as amended.<sup>46</sup> Subpart Y contains binding truth-in-billing guidelines that apply to carriers selling telecommunications services.<sup>47</sup> Subpart Y requires carriers to provide customers with necessary information about their services and charges. Specifically, Subpart Y requires carriers to separate charges on the bill by provider, to describe clearly the services involved, to display clearly the name of the service provider in association with its charges, to display a toll-free number (or, in certain cases, an email or website address) for consumer inquiries, to identify those charges for which failure to pay will not result in disconnection of the customer's basic local service, and to highlight new service providers.

### Purpose

65. Part 64, Subpart Y is designed to make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services. Subpart Y is also intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change to consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill).

### Analysis

#### Status of Competition

66. Competition in local service markets has continued to increase since the 2000 Biennial Review. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act, and were earning about 10 percent of local service revenues for the year 2001, up from 6 percent in 1999. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers appear to be using wireless telephones as substitutes for wireline services, and local service over cable has increased to over two million connections. The long distance market has been open to competition for some time, and domestic

---

<sup>46</sup> 47 U.S.C. §§ 201(b), 258.

<sup>47</sup> The Commission exempted CMRS carriers and other providers of mobile service from compliance with certain truth-in-billing requirements, including the requirements to highlight new providers, to provide descriptions of services rendered, and to identify charges for which failure to pay will not result in disconnection of the customer's basic, local service. See CC Docket No. 98-170, 14 FCC Rcd 7492 (1999).

and international long distance prices have fallen by 37 percent since 1993. There is greater competition for high volume customers than for low volume customers.

**Recent Efforts**

67. No recent efforts.

**Comments**

68. No comments were received specifically addressing Part 64, Subpart Y.

**Recommendation**

69. The staff does not recommend any changes as part of the Biennial Review. The rules in Part 64, Subpart Y are intended to make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services. The rules also are intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change to consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill). The staff believes these regulatory objectives continue to be valid. We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted.

## Part 68 – Connection of Terminal Equipment to the Telephone Network

### Description

70. Part 68 was established in 1974 as the result of a court decision ruling that the Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) to the public switched telephone network (PSTN), so long as the CPE would not cause harm to the PSTN.<sup>48</sup> Part 68 also implements the Hearing Aid Compatibility Act of 1988 (HAC Act).<sup>49</sup> The HAC Act requires that, unless exempt, all essential telephones and all telephones manufactured in or imported into the United States after August 16, 1989 must “provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.”<sup>50</sup> The statute also directs the Commission to assess periodically the appropriateness of continuing the exemptions. In addition, among its many provisions, Part 68 also includes certain requirements for terminal equipment which implement the Telephone Consumer Protection Act of 1991 (the TCPA).<sup>51</sup> Congress enacted the TCPA in an effort to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA imposes, among other things, certain restrictions on the use of automatic dialing machines and the use of telephone facsimile machines to send unsolicited advertisements. These include a requirement that addresses line seizure by automatic telephone dialing systems and a requirement that all fax transmissions include source labeling (47 C.F.R. §§ 68.318(c) and 68.318(d), respectively). The scope of this discussion is limited to Part 68 as it applies to telephone compatibility with hearing aids, line seizure by automatic telephone dialing systems, and the requirement that all fax transmissions include source labeling.<sup>52</sup>

### Purpose

71. The purpose of Part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network. The purpose of sections 68.318(c)

---

<sup>48</sup> *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

<sup>49</sup> 47 U.S.C. § 610.

<sup>50</sup> Public mobile service phones are currently exempt from the hearing aid compatibility requirements of the HAC Act. See 47 U.S.C. § 610(b)(2)(A)(i) and (ii). The Commission’s rules broadly define public mobile services as “radio services in which common carriers are authorized to offer and provide mobile and related fixed radio telecommunication services for hire to the public.” See 47 C.F.R. § 22.99.

<sup>51</sup> Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

<sup>52</sup> The Wireline Competition Bureau oversees Part 68 as it applies to the connection of CPE to the PSTN. A discussion of Part 68 as it applies to such matters is contained in the Wireline Competition Bureau’s Biennial Regulatory Review 2002 Staff Report.

and 68.318(d) is to implement the specific mandates of the TCPA which, as noted above, were intended to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety.

## Analysis

### Status of Competition

72. Not relevant with regard to Part 68 as it applies to hearing aid compatibility. The rules implement the HAC Act and are intended to ensure that persons with hearing aids have reasonable access to the telephone network by providing uniform standards for the compatibility of hearing aids and telephones. Accordingly, the realization of these benefits is not determined by economic competition.

73. Not relevant with regard to sections 68.318(c) and 68.318(d).<sup>53</sup> The staff notes that since the adoption of the rules, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines.

### Recent Efforts

74. On October 29, 2001, the Commission adopted a *Notice of Proposed Rulemaking*, to examine whether public mobile service telephones which are exempt from the Commission's rules implementing the HAC Act should be required to be hearing aid compatible.<sup>54</sup> On September 18, 2002, the Commission adopted a *Notice of Proposed Rulemaking* seeking comment on whether the Commission's rules need to be revised in order to more effectively carry out Congress's directives in the TCPA.<sup>55</sup> As part of that inquiry, the Commission is seeking comment on the effectiveness of the Part 68 rules as they apply to telemarketing calls and practices.

### Comments

75. All the comments received addressing Part 68 as it applies to hearing aid compatibility emphatically support their continued application.<sup>56</sup> Many commenters

---

<sup>53</sup> See discussion of Part 64, Subpart L *supra*.

<sup>54</sup> *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Notice of Proposed Rulemaking, WT Docket No. 01-309, 16 FCC Rcd 20588 (rel. Nov. 14, 2001).

<sup>55</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002).

<sup>56</sup> See, e.g., Comments of Telecommunications for the Deaf, Inc.; Comments of James D. Gibbons, President CEO, National Industries for the Blind; Comments of David Meyers, Texas Commission for the Deaf and Hard of Hearing; Comments of I. King Jordan, President, Gallaudet University.

make the general assertion that although beneficial, the rules should be strengthened.<sup>57</sup> Certain commenters, including Self Help for Hard of Hearing People and Pamela Y. Holmes, Chair, National Association of the Deaf – Telecommunications Advocacy Network, contend that the Commission should lift the current exemption of digital wireless phones from the Commission’s HAC rules.<sup>58</sup>

76. No comments were received specifically addressing sections 68.318(c) and 68.318(d).

## Recommendation

77. The staff does not recommend changes to Part 68 as it applies to hearing aid compatibility as part of the Biennial Review. All the comments received emphatically support the continued application of the rules. The purpose of Part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network which the rules continue to do. Moreover, because Part 68 as it applies to hearing aid compatibility is not competition-related, we cannot find that Part 68 is no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that Part 68 as it applies to hearing aid compatibility is necessary in the public interest and recommend that repeal or modification is not warranted. We note also that the Commission is currently considering whether to expand the applicability of the rules to the extent it is examining the current exemption of wireless phones from the Commission’s HAC rules.<sup>59</sup>

78. The staff does not recommend changes to Part 68, sections 68.318(c) and 68.318(d) as part of the Biennial Review. Sections 68.318(c) and 68.318(d) implement the specific mandates of the TCPA which, as noted above, were intended to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. Moreover, because these rules are not competition-related, we cannot find these rules are no longer necessary in the public interest as a result of meaningful economic competition. We accordingly conclude that these rules remain necessary in the public interest and recommend that repeal or modification is not warranted. We also note that the Commission is currently considering whether to revise and expand those rules as part

---

<sup>57</sup> See, e.g., Comments of The Texas Commission for the Deaf and Hard of Hearing.

<sup>58</sup> Comments of Self Help for Hard of Hearing People (SHHH) re: Notice of 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Consumer & Governmental Affairs Bureau at 7; Comments of Pamela Y. Holmes, Chair, National Association of the Deaf – Telecommunications Advocacy Network at 3. See also Comments of the Rehabilitation Engineering Center on Telecommunications Access of the Trace Center, University of Wisconsin and Gallaudet University at 3-4.

<sup>59</sup> *In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Notice of Proposed Rulemaking, WT Docket No. 01-309, 16 FCC Rcd 20588 (rel. Nov. 14, 2001).

of its review of the rules implementing the Telephone Consumer Protection Act of 1991.<sup>60</sup>

---

<sup>60</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, CC Docket No. 92-90, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 02-250 (rel. Sep. 18, 2002)